

AN ACT

To amend sections 903.08 and 6111.04 and to enact section 6111.451 of the Revised Code to make changes to the national pollutant discharge elimination system program with respect to concentrated animal feeding facilities, to require the Director of Environmental Protection to adopt rules specifying certain construction activities that may be conducted prior to approval of plans for a treatment or disposal works under the Water Pollution Control Law, and to establish the Preconstruction Rules Working Group for the purpose of developing the rules.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 903.08 and 6111.04 be amended and section 6111.451 of the Revised Code be enacted to read as follows:

Sec. 903.08. (A)(1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of manure is transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section,

the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

(B)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge manure from a point source into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. ~~The owner or operator of a concentrated animal feeding operation~~ Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of manure shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. ~~A concentrated animal feeding operation is deemed to be a point source that discharges manure into the waters of the state unless the director has determined that the concentrated animal feeding operation has no potential to discharge manure into the waters of the state. If an owner or operator of a concentrated animal feeding operation receives notice from the director that the director has determined that the concentrated animal feeding operation has no potential to discharge manure, the owner or operator is not required to apply for an individual NPDES permit or for coverage under a general NPDES permit for that operation. The director's determination shall be made in accordance with rules~~ The director is authorized to issue, revoke, modify, or deny such an individual permit or issue, revoke, or deny coverage under a general permit in compliance with all requirements of the Federal Water Pollution Control Act. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of manure prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when

such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by rule. The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

- (1) The application contains misleading or false information.
- (2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.
- (3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.
- (2) The discharges are more appropriately authorized by a general

permit than by an individual permit.

(3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K)(1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the director pursuant to terms and

conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(L) The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(M)(1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act.

Sec. 6111.04. (A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

(B) If the director of environmental protection administers a sludge management program pursuant to division (S) of section 6111.03 of the Revised Code, both of the following apply except as otherwise provided in division (B) or (F) of this section:

(1) No person, in the course of sludge management, shall place on land located in the state or release into the air of the state any sludge or sludge materials.

(2) An action prohibited under division (B)(1) of this section is hereby declared to be a public nuisance.

Divisions (B)(1) and (2) of this section do not apply if the person placing or releasing the sludge or sludge materials holds a valid, unexpired permit, or renewal of a permit, governing the placement or release as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

(C) No person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.

(D) No person to whom a sludge management permit has been issued shall place on the land or release into the air of the state any sludge or sludge materials in excess of the permissive amounts specified under the existing sludge management permit without first receiving a modification of the existing sludge management permit or a new sludge management permit to do so from the director.

(E) The director may require the submission of plans, specifications, and other information that the director considers relevant in connection with the issuance of permits.

(F) This section does not apply to any of the following:

(1) Waters used in washing sand, gravel, other aggregates, or mineral products when the washing and the ultimate disposal of the water used in the washing, including any sewage, industrial waste, or other wastes contained in the waters, are entirely confined to the land under the control of the person engaged in the recovery and processing of the sand, gravel, other aggregates, or mineral products and do not result in the pollution of waters of the state;

(2) Water, gas, or other material injected into a well to facilitate, or that is incidental to, the production of oil, gas, artificial brine, or water derived in association with oil or gas production and disposed of in a well, in compliance with a permit issued under Chapter 1509. of the Revised Code, or sewage, industrial waste, or other wastes injected into a well in compliance with an injection well operating permit. Division (F)(2) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States

environmental protection agency.

(3) Application of any materials to land for agricultural purposes or runoff of the materials from that application or pollution by animal waste or soil sediment, including attached substances, resulting from farming, silvicultural, or earthmoving activities regulated by Chapter 307. or ~~1515. 1511.~~ of the Revised Code; Division (F)(3) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.

(4) The excrement of domestic and farm animals defecated on land or runoff therefrom into any waters of the state; Division (F)(4) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.

(5) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, ~~storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or manure, as defined in that section~~ any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture;

(6) The discharge of sewage, industrial waste, or other wastes into a sewerage system tributary to a treatment works. Division (F)(6) of this section does not authorize any discharge into a publicly owned treatment works in violation of a pretreatment program applicable to the publicly owned treatment works.

(7) A household sewage treatment system or a small flow on-site sewage treatment system, as applicable, as defined in section 3718.01 of the Revised Code that is installed in compliance with Chapter 3718. of the Revised Code and rules adopted under it. Division (F)(7) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.

(8) Exceptional quality sludge generated outside of this state and contained in bags or other containers not greater than one hundred pounds in capacity. As used in division (F)(8) of this section, "exceptional quality sludge" has the same meaning as in division (Y) of section 3745.11 of the Revised Code.

(G) The holder of a permit issued under section 402 (a) of the Federal Water Pollution Control Act need not obtain a permit for a discharge authorized by the permit until its expiration date. ~~The~~ Except as otherwise

provided in this division, the director of environmental protection shall administer and enforce those permits within this state and may modify their terms and conditions in accordance with division (J) of section 6111.03 of the Revised Code. On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, the director of agriculture shall administer and enforce those permits within this state that are issued for any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture.

Sec. 6111.451. Not later than one hundred eighty days after the effective date of this section, the director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code specifying construction activities that do not, by themselves, constitute installing works for the treatment or disposal of sewage or other waste for which approval of plans is required under section 6111.44 or 6111.45 of the Revised Code. The activities shall include the grading and clearing of land, on-site storage of portable parts and equipment, and the construction of foundations or buildings that are not directly related to the installation of treatment or disposal works. The rules also shall allow specified initial activities that are part of the installation of treatment or disposal works, such as the installation of electrical and other utilities for the works, prior to the approval of the plans for the works, provided that the owner or operator of the works has submitted the complete plans for the works to the director and has notified the director that this activity will be undertaken prior to the approval of the plans. Any activity that is undertaken under the rules adopted under this section shall be at the risk of the owner or operator. The rules adopted under this section, to the extent possible, shall be consistent with rules adopted under division (F)(5) of section 3704.03 of the Revised Code.

SECTION 2. That existing sections 903.08 and 6111.04 of the Revised Code are hereby repealed.

SECTION 3. (A) There is hereby created the Preconstruction Rules Working Group consisting of the following members appointed by the Governor:

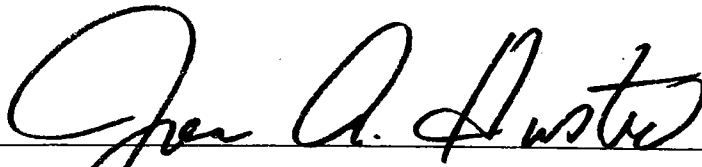
- (1) A representative of the Ohio Farm Bureau Federation;
- (2) A representative of the Ohio Manufacturers' Association;
- (3) A representative of the Ohio Homebuilders Association;

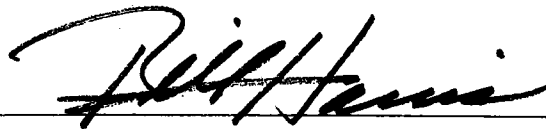
(4) A representative of a statewide environmental advocacy organization;

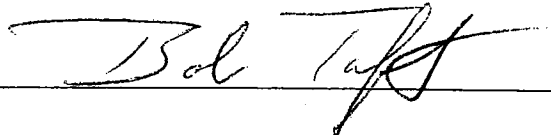
(5) A person representing the Ohio utility industry.

(B) The Governor shall make appointments to the Working Group not later than thirty days after the effective date of this section. Vacancies on the Working Group shall be filled in the manner provided for original appointments.

(C) The Preconstruction Rules Working Group shall work with the Director of Environmental Protection in the development of proposed rules for the purposes of section 6111.451 of the Revised Code as enacted by this act. The proposed rules shall be developed not later than one hundred eighty days after the effective date of this section. The Director then shall proceed to adopt the rules as required by section 6111.451 of the Revised Code. Upon the expiration of the one-hundred-eighty-day period for the development of the proposed rules, the Preconstruction Rules Working Group shall cease to exist.



Speaker _____ of the House of Representatives.

President _____ of the Senate.Passed December 19, 2006Approved December 27, 2006

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____

AN ACT

To amend sections 903.08 and 6111.04 and to enact section 6111.451 of the Revised Code to make changes to the national pollutant discharge elimination system program with respect to concentrated animal feeding facilities, to require the Director of Environmental Protection to adopt rules specifying certain construction activities that may be conducted prior to approval of plans for a treatment or disposal works under the Water Pollution Control Law, and to establish the Preconstruction Rules Working Group for the purpose of developing the rules.

Introduced by

Senators Mumper, Grendell, Niehaus, Schuler, Harris
Representatives Aslanides, Domenick, Gibbs, Schlichter,
Widener, Distel, McGregor, J., Core, Reinhard, Blessing,
Collier, Combs, Dolan, Evans, C., Hagan, Hood, Schneider,
Setzer

Passed by the Senate,

December 5, 2006

Passed by the House of Representatives,

December 13, 2006

*Filed in the office of the Secretary of State at
Columbus, Ohio, on the*

— day of —, A. D. 20

Secretary of State.

*(Concurred in House Amendments
December 19, 2006)*

[§ 307.20.4] § 307.204. Procedure concerning proposed new or expanded concentrated animal feeding facility.

(A) As used in this section:

(1) "Concentrated animal feeding facility" and "major concentrated animal feeding facility" have the same meanings as in section 903.01 of the Revised Code.

(2) "Facility" means a proposed new or expanded major concentrated animal feeding facility.

(3) "Improvement" means the construction, modification, or both of county infrastructure.

(B) A person who proposes to do any of the following shall provide written notification as required under division (C) of this section to the board of county commissioners of the county in which a facility is or is to be located:

(1) Establish a new major concentrated animal feeding facility;

(2) Increase the design capacity of an existing major concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable;

(3) Increase the design capacity of an existing concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable, and to a design capacity of more than ten times the number of animals specified in any of the categories in division (H) of section 903.01 of the Revised Code.

(C) The person shall notify the board in writing by certified mail of the proposed construction or expansion of the facility and include the following information:

(1) The anticipated travel routes of motor vehicles to and from the facility;

(2) The anticipated number and weights of motor vehicles traveling to and from the facility.

(D) At the request of the board, the county engineer may review the written notification and advise the board on both of the following:

(1) Improvements and maintenance of improvements that are reasonably needed in order to accommodate the impact on county infrastructure that is anticipated as a result of the facility, including increased travel or the types of vehicles on county roads;

(2) The projected costs of the improvements and maintenance.

Not later than ten days after receiving the written notification, the board may request the person to provide additional reasonable and relevant information regarding the impact of the facility on county infrastructure. The person shall provide the information not later than ten days after the request is made.

(E) (1) Not later than thirty days after the initial written notification is received by the board, the board shall submit to the person its recommendations, if any, concerning the improvements that will be needed as a result of the facility and the cost of those improvements.

(2) Not later than fifteen days after receipt of the board's recommendations, the person shall notify the board either that the person agrees with the recommendations and will implement them or that the person is submitting reasonable alternative recommendations or modifications to the board. If the person agrees with the recommendations, they shall be considered to be the board's final recommendations.

(3) If the board receives alternative recommendations or modifications under division (E)(2) of this section, the board shall select final recommendations and submit them to the person not later than thirty days after the receipt of the alternative recommendations or modifications.

(F) The board shall prepare a written, dated statement certifying that the written notification required under this section was submitted and that final recommendations were selected regarding needed improvements and the costs of those improvements. The board shall provide the person with the original of the statement so that the person can include it with the application for a permit to install for the facility as required under division (C)(4) of section 903.02 of the Revised Code. The board shall retain a copy of the statement for its records.

(G) The person shall construct, modify, and maintain or finance the construction, modification, and maintenance of improvements as provided in the board's final recommendations and with the approval and oversight of the county engineer. If the person fails to do so, the board shall notify the person by certified mail that the board intends to initiate mediation with the person if the person remains out of compliance with the final recommendations.

The board shall allow sufficient time for the person to apply for and proceed to obtain, for the purpose of financing the construction, modification, or maintenance of the improvements, exemptions from taxation under sections 5709.63, 5709.632, 5709.73, and 5709.78 of the Revised Code or state or federal grants that may be available.

If the person remains out of compliance with the final recommendations, the board may initiate mediation with the person in order to resolve the differences between them. If mediation

fails to resolve the differences, the board and the person first shall attempt to resolve the differences through any legal remedies before seeking redress through a court of common pleas.

(H) If the person subsequently submits an application under section 903.02 of the Revised Code for a permit to modify the facility, or if the routes of travel to or from the facility change for any reason other than road construction conducted by the county, the board or the person may request that additional information be provided in writing and shall proceed as provided in this section for the notification and recommendation proceedings.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, deleted "Animal unit" from the beginning of (A)(1); deleted "number of animal units of" following "Increase the" in (B)(2) and (3); substituted "times the number of ... the Revised Code" for "thousand animal units" in (B)(3); and made minor stylistic changes.

Ohio Administrative Code

Department of agriculture, livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1 et seq

[§ 505.26.6] § 505.266. Procedure concerning proposed new or expanded concentrated animal feeding facility.

(A) As used in this section:

(1) "Concentrated animal feeding facility" and "major concentrated animal feeding facility" have the same meanings as in section 903.01 of the Revised Code.

(2) "Facility" means a proposed new or expanded major concentrated animal feeding facility.

(3) "Improvement" means the construction, modification, or both of township infrastructure.

(B) A person who proposes to do any of the following shall provide written notification as required under division (C) of this section to the board of township trustees of the township in which a facility is or is to be located:

(1) Establish a new major concentrated animal feeding facility;

(2) Increase the design capacity of an existing major concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable;

(3) Increase the design capacity of an existing concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable, and to a design capacity of more than ten times the number of animals specified in any of the categories in division (M) of section 903.01 of the Revised Code.

(C) The person shall notify the board in writing by certified mail of the proposed construction or expansion of the facility and include the following information:

- (1) The anticipated travel routes of motor vehicles to and from the facility;
- (2) The anticipated number and weights of motor vehicles traveling to and from the facility.

(D) At the request of the board, the county engineer may review the written notification and advise the board on both of the following:

- (1) Improvements and maintenance of improvements that are reasonably needed in order to accommodate the impact on township infrastructure that is anticipated as a result of the facility, including increased travel or the types of vehicles on township roads;
- (2) The projected costs of the improvements and maintenance.

Not later than ten days after receiving the written notification, the board may request the person to provide additional reasonable and relevant information regarding the impact of the facility on township infrastructure. The person shall provide the information not later than ten days after the request is made.

(E) (1) Not later than thirty days after the initial written notification is received by the board, the board shall submit to the person its recommendations, if any, concerning the improvements that will be needed as a result of the facility and the cost of those improvements.

(2) Not later than fifteen days after receipt of the board's recommendations, the person shall notify the board either that the person agrees with the recommendations and will implement them or that the person is submitting reasonable alternative recommendations or modifications to the board. If the person agrees with the recommendations, they shall be considered to be the board's final recommendations.

(3) If the board receives alternative recommendations or modifications under division (E)(2)

of this section, the board shall select final recommendations and submit them to the person not later than thirty days after the receipt of the alternative recommendations or modifications.

(F) The board shall prepare a written, dated statement certifying that the written notification required under this section was submitted and that final recommendations were selected regarding needed improvements and the costs of those improvements. The board shall provide the person with the original of the statement so that the person can include it with the application for a permit to install for the facility as required under division (C)(4) of section 903.02 of the Revised Code. The board shall retain a copy of the statement for its records.

(G) The person shall construct, modify, and maintain or finance the construction, modification, and maintenance of improvements as provided in the board's final recommendations and with the approval and oversight of the county engineer. If the person fails to do so, the board shall notify the person by certified mail that the board intends to initiate mediation with the person if the person remains out of compliance with the final recommendations.

The board shall allow sufficient time for the person to apply for and proceed to obtain, for the purpose of financing the construction, modification, or maintenance of the improvements, exemptions from taxation under sections 5709.63, 5709.632, 5709.73, and 5709.78 of the Revised Code or state or federal grants that may be available.

If the person remains out of compliance with the final recommendations, the board may initiate mediation with the person in order to resolve the differences between them. If mediation fails to resolve the differences, the board and the person first shall attempt to resolve the differences through any legal remedies before seeking redress through a court of common pleas.

(H) If the person subsequently submits an application under section 903.02 of the Revised Code for a permit to modify the facility, or if the routes of travel to or from the facility change for any reason other than road construction conducted by the township, the board or the person may request that additional information be provided in writing and shall proceed as provided in this section for the notification and recommendation proceedings.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, deleted "Animal unit" from the beginning of (A)(1); deleted "number of animal units of" following "Increase the" in (B)(2) and (3); substituted "times the number of ... the Revised Code" for "thousand animal units" in (B)(3); and made minor stylistic changes.

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Ohio Administrative Code

Department of agriculture, livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1 et seq.

§ 903.01. Definitions.

As used in this chapter:

(A) "Agricultural animal" means any animal generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, and swine; horses; and any other animal included by the director of agriculture by rule. "Agricultural animal" does not include fish or other aquatic animals regardless of whether they are raised at fish hatcheries, fish farms, or other facilities that raise aquatic animals.

(B) "Animal feeding facility" means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

"Animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied.

Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure.

(C) "Best management practices" means best management practices established in rules.

(D) "Cattle" includes, but is not limited to, heifers, steers, bulls, and cow and calf pairs.

(E) "Concentrated animal feeding facility" means an animal feeding facility with a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section.

(F) "Concentrated animal feeding operation" means an animal feeding facility that complies with one of the following:

(1) Has a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section;

(2) Satisfies the criteria in division (M), (Q), or (EE) of this section;

(3) Is designated by the director of agriculture as a medium or small concentrated animal feeding operation pursuant to rules.

(G) "Discharge" means to add from a point source to waters of the state.

(H) "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C. 1251 et. seq., as amended, and regulations adopted under it.

(I) "Finalized," with respect to the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code, means that all rules that are necessary for the administration of this chapter have been adopted and all employees of the department of agriculture that are necessary for the administration of this chapter have been employed.

(J) "General permit" has the meaning that is established in rules.

(K) "Individual permit" has the meaning that is established in rules.

(L) "Installation permit" means a permit for the installation or modification of a disposal system or any part of a disposal system issued by the director of environmental protection under division (J)(1) of section 6111.03 of the Revised Code.

(M) "Large concentrated animal feeding operation" means an animal feeding facility that stables or confines at least the number of animals specified in any of the following categories:

(1) Seven hundred mature dairy cattle whether milked or dry;

(2) One thousand veal calves;

(3) One thousand cattle other than mature dairy cattle or veal calves;

(4) Two thousand five hundred swine that each weigh fifty-five pounds or more;

(5) Ten thousand swine that each weigh less than fifty-five pounds;

(6) Five hundred horses;

(7) Ten thousand sheep or lambs;

(8) Fifty-five thousand turkeys;

(9) Thirty thousand laying hens or broilers if the animal feeding facility uses a liquid manure handling system;

(10) One hundred twenty-five thousand chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(11) Eighty-two thousand laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(12) Thirty thousand ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(13) Five thousand ducks if the animal feeding facility uses a liquid manure handling system.

(N) "Major concentrated animal feeding facility" means a concentrated animal feeding facility with a total design capacity of more than ten times the number of animals specified in any of the categories in division (M) of this section.

(O) "Manure" means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

(P) "Manure storage or treatment facility" means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure.

(Q) "Medium concentrated animal feeding operation" means an animal feeding facility that satisfies both of the following:

(1) The facility stables or confines the number of animals specified in any of the following categories:

(a) Two hundred to six hundred ninety-nine mature dairy cattle whether milked or dry;

(b) Three hundred to nine hundred ninety-nine veal calves;

(c) Three hundred to nine hundred ninety-nine cattle other than mature dairy cattle or veal calves;

(d) Seven hundred fifty to two thousand four hundred ninety-nine swine that each weigh fifty-five pounds or more;

(e) Three thousand to nine thousand nine hundred ninety-nine swine that each weigh less than

fifty-five pounds;

- (f) One hundred fifty to four hundred ninety-nine horses;
- (g) Three thousand to nine thousand nine hundred ninety-nine sheep or lambs;
- (h) Sixteen thousand five hundred to fifty-four thousand nine hundred ninety-nine turkeys;
- (i) Nine thousand to twenty-nine thousand nine hundred ninety-nine laying hens or broilers if the animal feeding facility uses a liquid manure handling system;
- (j) Thirty-seven thousand five hundred to one hundred twenty-four thousand nine hundred ninety-nine chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (k) Twenty-five thousand to eighty-one thousand nine hundred ninety-nine laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (l) Ten thousand to twenty-nine thousand nine hundred ninety-nine ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (m) One thousand five hundred to four thousand nine hundred ninety-nine ducks if the animal feeding facility uses a liquid manure handling system.

(2) The facility does one of the following:

- (a) Discharges pollutants into waters of the United States through a ditch constructed by humans, a flushing system constructed by humans, or another similar device constructed by humans;
- (b) Discharges pollutants directly into waters of the United States that originate outside of and that pass over, across, or through the facility or otherwise come into direct contact with the animals at the facility.

"Medium concentrated animal feeding operation" includes an animal feeding facility that is designated by the director as a medium concentrated animal feeding operation pursuant to rules.

(R) "Mortality composting" means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.

(S) "NPDES permit" means a permit issued under the national pollutant discharge elimination system established in section 402 of the Federal Water Pollution Control Act and includes the renewal of such a permit. "NPDES permit" includes the federally enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated.

(T) "Permit" includes an initial, renewed, or modified permit to install, permit to operate,

NPDES permit, and installation permit unless expressly stated otherwise.

(U) "Permit to install" means a permit issued under section 903.02 of the Revised Code.

(V) "Permit to operate" means a permit issued or renewed under section 903.03 of the Revised Code and includes incorporated NPDES permit provisions, if applicable.

(W) "Person" means any legal entity defined as a person under section 1.59 of the Revised Code, the state, any political subdivision of the state, any interstate body created by compact, the United States, or any department, agency, or instrumentality of any of those entities.

(X) "Point source" has the same meaning as in the Federal Water Pollution Control Act.

(Y) "Process generated waste water" means water that is directly or indirectly used in the operation of an animal feeding facility for any of the following:

- (1) Spillage or overflow from animal watering systems;
- (2) Washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility;
- (3) Direct contact swimming, washing, or spray cooling of animals;
- (4) Dust control.

(Z) "Process waste water" means any process generated waste water and any precipitation, including rain or snow, that comes into contact with manure, litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products such as milk or eggs.

(AA) "Production area" means any of the following components of an animal feeding facility:

- (1) Animal confinement areas, including, but not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, animal walkways, and stables;
- (2) Manure storage areas, including, but not limited to, manure storage or treatment facilities;
- (3) Raw material storage areas, including, but not limited to, feed silos, silage bunkers, commodity buildings, and bedding materials;
- (4) Waste containment areas, including, but not limited to, any of the following:
 - (a) An egg washing or egg processing facility;
 - (b) An area used in the storage, handling, treatment, or disposal of mortalities;
 - (c) Settling basins, runoff ponds, liquid impoundments, and areas within berms and

diversions that are designed and maintained to separate uncontaminated storm water runoff from contaminated water and to contain and treat contaminated storm water runoff.

(BB) "Public meeting" means a nonadversarial public hearing at which a person may present written or oral statements for the director of agriculture's consideration and includes public hearings held under section 6111.12 of the Revised Code.

(CC) "Review compliance certificate" means a certificate issued under section 903.04 of the Revised Code.

(DD) "Rule" means a rule adopted under section 903.10 of the Revised Code.

(EE) "Small concentrated animal feeding operation" means an animal feeding facility that is not a large or medium concentrated animal feeding operation and that is designated by the director as a small concentrated animal feeding operation pursuant to rules.

(FF) "Waters of the state" has the same meaning as in section 6111.01 of the Revised Code.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.01, amended and renumbered RC § 3335.56 in 139 v H 583, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, rewrote (A) through (F); inserted present (M) and redesignated the remaining subsections accordingly; substituted "times the number of animals specified in any of the categories in division (M) of this section" for "thousand animal units" in present (N); inserted present (Q), (AA), and (EE) and redesignated the remaining subsections accordingly; and made minor stylistic changes.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Definitions. OAC 901:10-1-01.

§ 903.02. Program for issuance of permits to install.

(A) (1) Not later than one hundred eighty days after March 15, 2001, the director of agriculture shall prepare a program for the issuance of permits to install under this section.

(2) On and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to install during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to install shall submit an application to the director on a form that the director prescribes and provides together with a fee in an amount established by rule. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) The type of livestock and the number of animals that the concentrated animal feeding facility would have the design capacity to raise or maintain;

(3) Designs and plans for the proposed construction of the concentrated animal feeding facility that include the proposed location of the construction, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the director requires by rule;

(4) In the case of an application for a concentrated animal feeding facility that meets the criteria established in sections 307.204 [307.20.4] and 505.266 [505.26.6] of the Revised Code, written statements from the board of county commissioners of the county and the board of township trustees of the township in which the concentrated animal feeding facility would be located certifying that, in accordance with those sections, the applicant has provided the boards with the required written notification and that final recommendations were selected regarding improvements, if any, to county or township infrastructure that are needed as a result of the new or expanded concentrated animal feeding facility and the costs of those improvements;

(5) A statement of the quantity of water that the concentrated animal feeding facility will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water;

(6) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act required to be provided under section 903.05 of the Revised Code, if applicable;

(7) Any other information required by rule.

Information required to be included in an application for the modification of a permit to install, together with the applicable fee amount, shall be established in rules.

(D) The director shall issue permits to install in accordance with section 903.09 of the Revised Code. The director shall deny a permit to install if either of the following applies:

- (1) The permit application contains misleading or false information.
- (2) The designs and plans fail to conform to best management practices.

Additional grounds for the denial of a permit to install shall be those established in this chapter and rules.

(E) A permit to install shall expire after a period specified by the director unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. The director may extend the expiration date of a permit to install upon request of the applicant.

(F) The director may modify, suspend, or revoke a permit to install in accordance with rules.

(G) Nothing in this chapter affects section 1521.16 of the Revised Code.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.02 (GC § 1172; 106 v 122(123), § 7; 109 v 105(126); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The provisions of § 4 of SB 141 (148 v -) read as follows:

SECTION 4. (A) As used in this section, "concentrated animal feeding operations," "animal feeding facilities," and "manure" have the same meanings as in section 903.01 of the Revised Code, as enacted by this act.

(B) On the date on which the Director of Agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, as enacted by this act, the Director of Environmental Protection shall provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued under division (J)(1) of section 6111.03 of the Revised Code for the installation of disposal systems for concentrated animal feeding operations, animal feeding facilities, or manure that were issued on or before that date together with any related information that the Director of Agriculture requests;

(2) All permit applications and accompanying information that were submitted under division (J)(1) of section 6111.03 of the Revised Code prior to the date specified in division (B) of this section for the

installation of disposal systems identified in that division.

(C) On the date on which the United States Environmental Protection Agency approves the NPDES program submitted by the Director of Agriculture under section 903.08 of the Revised Code, as enacted by this act, the Director of Environmental Protection shall provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued under division (J)(1) of section 6111.03 of the Revised Code for the discharge of manure and the discharge of storm water from concentrated animal feeding operations or animal feeding facilities that were issued on or before that date together with any related information that the Director of Agriculture requests;

(2) All permit applications and accompanying information that were submitted under division (J)(1) of section 6111.03 of the Revised Code prior to the date specified in division (C) of this section for the activities identified in that division.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" in (A)(1); and substituted "animals" for "animal units" in (C)(2).

Cross-References to Related Sections

Penalties, RC § 903.99.

Corrective actions, civil penalties; injunctions, RC § 903.16.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Criteria for decision-making. OAC 901:10-1-03.

Fees. OAC 901:10-1-04.

General administrative requirements. OAC 901:10-1-02.

Prohibitions. OAC 901:10-1-10.

Permit to install. OAC 901:10-2-01 et seq.

ALR

Hog breeding, confining, or processing facility as constituting a nuisance. 93 ALR5th 621.

§ 903.03. Program for issuance of permits to operate.

(A) (1) Not later than one hundred eighty days after the effective date of this section, the director of agriculture shall prepare a program for the issuance of permits to operate under this section.

(2) Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to operate during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to operate shall submit a fee in an amount established by rule together with, except as otherwise provided in division (E) of this section, an application to the director on a form that the director prescribes and provides. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act that is required to be provided under section 903.05 of the Revised Code, if applicable;

(3) A manure management plan for the concentrated animal feeding facility that conforms to best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule;

(4) An insect and rodent control plan for the concentrated animal feeding facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(5) In the case of an application for a major concentrated animal feeding facility, written

proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(D) The director shall issue permits to operate in accordance with section 903.09 of the Revised Code. The director shall deny a permit to operate if either of the following applies:

- (1) The permit application contains misleading or false information;
- (2) The manure management plan or insect and rodent control plan fails to conform to best management practices.

Additional grounds for the denial of a permit to operate shall be those established in this chapter and in rules.

(E) The director shall issue general permits to operate for categories of concentrated animal feeding facilities that will apply in lieu of individual permits to operate, provided that each category of facilities meets all of the criteria established in rules for general permits to operate. A person who is required to obtain a permit to operate shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, shall submit an application for an individual permit to operate. Upon receipt of a notice of intent to be covered under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual permit to operate.

(F) A permit to operate shall be valid for a period of five years.

(G) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing applications for permits to operate that are established under this section and by rules, including requirements pertaining to public notice and participation.

(H) The director may modify, suspend, or revoke a permit to operate in accordance with rules.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.03 (GC § 1171; 106 v 122, § 2; 109 v 105(126); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Penalties, RC § 903.99.

Corrective actions, civil penalties; injunctions, RC § 903.16.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Criteria for decision-making. OAC 901:10-1-03.

Fees. OAC 901:10-1-04.

General administrative requirements. OAC 901:10-1-02.

Prohibitions. OAC 901:10-1-10.

Permit to operate. OAC 901:10-2-07 et seq.

§ 903.04. Transfer of authority concerning previously issued installation permits; review compliance certificate for existing facility.

(A) As used in this section, "existing concentrated animal feeding facility" or "existing facility" means a concentrated animal feeding facility that was in existence prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.03 of the Revised Code and that has received an installation permit prior to that date.

(B) On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, the authority to enforce terms and conditions of installation permits that previously were issued to animal feeding facilities shall be transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those installation permits. On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, an installation permit concerning which enforcement authority has been transferred shall be deemed to have been issued under this section.

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs:

(1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section.

(2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

This division does not apply to a person who has made a timely submittal of the information required under division (E)(2) of this section and who is waiting for the director to issue or deny a review compliance certificate. Such a person may continue the operation of the existing concentrated animal feeding facility until, if applicable, the director issues an order denying the review compliance certificate.

(E) Not later than two years after the date on which the director has finalized the program required under division (A)(1) of section 903.03 of the Revised Code, both of the following apply:

(1) The director shall review the installation permit that previously was issued to an existing concentrated animal feeding facility and shall inspect the facility to determine if it is in compliance with that permit.

(2) Except as otherwise provided in division (E)(2) of this section, the owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(a) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(b) The type of livestock and number of animals that the facility has the design capacity to raise or maintain;

(c) A manure management plan for the facility that conforms to best management practices

regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule. However, if a manure management plan submitted under division (E)(2)(c) of this section does not conform with best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility, the director nevertheless shall deem the plan to conform with best management practices if the owner or operator does all of the following:

(i) Performs a phosphorous index risk assessment procedure or a phosphorous soil test risk assessment procedure in accordance with rules;

(ii) Demonstrates that the facility cannot comply with best management practices before the date on which the review compliance certificate is to be issued;

(iii) Includes in the manure management plan an implementation plan under which the facility will comply with best management practices on or before December 31, 2006.

(d) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(e) In the case of a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code.

The owner or operator need not furnish any information otherwise required under division (E)(2) of this section if that information is included in the installation permit that was issued for the existing facility.

(F) After a review of the existing installation permit, an inspection of the facility, and a review of the information furnished under division (E)(2) of this section, and upon determining that the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas, the director shall issue an order issuing a review compliance certificate to the facility. In issuing the certificate, the director shall consider technical feasibility and economic costs. The director shall not require a significant capital expenditure, as defined by rule, by the facility before issuing a certificate.

The director may issue an order denying a review compliance certificate if the facility's insect and rodent control plan or manure management plan does not conform to best management practices and the requirements established in section 903.06 of the Revised Code and in rules. The denial of a review compliance certificate terminates the existing installation permit that was issued to the facility.

The issuance of a review compliance certificate shall not require public notice or a public meeting. However, notice shall be provided to persons who own property that is contiguous to the production area of the concentrated animal feeding facility for which the review compliance certificate is to be issued. Such persons may submit written comments to the director within a time established by the director.

The issuance of a review compliance certificate shall not be subject to appeal under Chapter 119. or sections 3745.04 to 3745.06 of the Revised Code. The denial or revocation of a review compliance certificate or the amendment of an installation permit resulting from a certificate may be challenged by the applicant in an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. An order of the director that denies or revokes a certificate or amends an installation permit as a result of a certificate may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(G) Upon the issuance of a review compliance certificate, the certificate automatically shall merge and become a part of the previously issued installation permit. If any of the terms and conditions of the installation permit and the review compliance certificate are in conflict, the terms and conditions of the review compliance certificate are controlling.

(H) (1) A review compliance certificate is valid for a period of five years. Not later than one hundred eighty days prior to the expiration date of the review compliance certificate, the owner or operator shall apply for a permit to operate.

(2) The director may revoke a review compliance certificate issued to an existing facility after the director has issued an order as a result of a hearing held under Chapter 119. of the Revised Code in which the facility has been found to be in violation of the terms and conditions of the review compliance certificate. An existing facility whose review compliance certificate is revoked shall obtain a permit to operate and, if applicable, a NPDES permit in order to resume operating.

(I) An existing facility that is issued a review compliance certificate shall comply with the previously issued installation permit, as amended by the certificate.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.04 (GC § 1171-1; 106 v 122, § 3; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL
ASSEMBLY *
* AND FILED WITH THE SECRETARY OF STATE THROUGH NOVEMBER 7, 2006 *
* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 *

TITLE 9. AGRICULTURE -- ANIMALS -- FENCES
CHAPTER 903. CONCENTRATED ANIMAL FEEDING FACILITIES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 903.05 (2006)

§ 903.05. Applicants who have not operated an Ohio facility for two of five past years; persons seeking to acquire facility that has been issued a permit

(A) Each application for a permit to install or permit to operate a concentrated animal feeding facility that is submitted by an applicant who has not operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application shall be accompanied by all of the following:

(1) A listing of all animal feeding facilities that the owner or operator of the proposed new or modified concentrated animal feeding facility has operated or is operating in this state;

(2) A listing of the animal feeding facilities that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the animal feeding facilities that the owner or operator has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any animal feeding facility that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any animal feeding facility that the owner or operator

has operated or is operating outside the United States.

The lists of animal feeding facilities operated by the owner or operator within or outside this state or outside the United States shall include, respectively, all such facilities operated by the owner or operator during the five-year period immediately preceding the submission of the application.

(B) If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of an animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the applicant and persons associated with the applicant, in the operation of animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

(C) A person who seeks to acquire a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the director of agriculture, a permit to install, or a permit to operate shall submit to the director the information specified in divisions (A)(1) to (3) of this section prior to the transfer of the permit. The permit shall not be transferred as otherwise provided in division (I) of section 903.09 of the Revised Code if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

History:

♦ 148 v S 141. Eff 3-15-2001; ♦ 151 v H 66, § 101.01, eff. 9-29-05.

Section Notes:

The effective date is set by § 612.03 of ♦ 151 v H 66.

Not analogous to former RC § 903.05 (GC § 1171-4; 106 v 122(123), § 6; 123 v 862(920); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

EFFECT OF AMENDMENTS

* 151 v H 66, effective September 29, 2005, deleted "concentrated" preceding "animal feeding" nine times throughout; and, in the introductory language of (A), inserted "a concentrated animal feeding facility".

✚ Related Statutes & Rules:

Cross-Reference to Related Statutes:

Program for issuance of permits to operate, RC § 903.03.

✚ OH Administrative Code:

Contents of an application for--

NPDES permit. OAC 901:10-3-01.

Permit to install. OAC 901:10-2-01.

Permit to operate. OAC 901:10-2-07.

Not analogous to former RC § 903.05 (GC § 1171-4; 106 v 122(123), § 6; 123 v 862(920); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Program for issuance of permits to operate, RC § 903.03.

Ohio Administrative Code

Contents of an application for -

NPDES permit. OAC 901:10-3-01.

Permit to install. OAC 901:10-2-01.

Permit to operate. OAC 901:10-2-07.

§ 903.06. Insect and rodent control plan for each facility.

(A) As used in this section, "plan" means an insect and rodent control plan prepared under this section.

(B) An owner or operator of a concentrated animal feeding facility shall prepare and submit to the director of agriculture in accordance with rules an insect and rodent control plan designed to minimize the presence and negative effects of insects and rodents at the concentrated animal feeding facility and in surrounding areas, including land on which manure is stored or applied. The plan shall conform to best management practices established in rules. The director shall approve or deny the plan within the time period established in rules by the director and may require modification of the plan at that time or a later time in accordance with rules.

(C) On and after the date that is established in rules by the director, no person shall own or operate a concentrated animal feeding facility unless an insect and rodent control plan for the facility has been approved by the director. The owner or operator of a concentrated animal feeding facility shall not violate the facility's insect and rodent control plan.

(D) The director shall enforce an insect and rodent control plan in accordance with rules and

shall assess a civil penalty in accordance with rules and section 903.16 of the Revised Code against an owner or operator of a concentrated animal feeding facility who operates it without a plan approved by the director or who violates the facility's plan.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.06 (133 v H 531), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Corrective actions, civil penalties; injunctions, RC § 903.16.

Program for issuance of permits to operate, RC § 903.03.

Ohio Administrative Code

Permit to operate: insect and rodent control plan. OAC 901:10-2-19.

§ 903.07. Livestock manager certification required for management and handling of manure.

(A) On and after the date that is established in rules by the director of agriculture, both of the following apply:

(1) The management and handling of manure at a major concentrated animal feeding facility, including the land application of manure or the removal of manure from a manure storage or treatment facility, shall be conducted only by or under the supervision of a person holding a livestock manager certification issued under this section. A person managing or handling manure who is acting under the instructions and control of a person holding a livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present at the time of the manure management or handling.

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued

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under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination. The director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked livestock manager certification in accordance with rules.

(C) Information required to be included in an application for a livestock manager certification, the amount of the application fee, and requirements regarding training and the examination shall be established in rules.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.07 (GC § 1170-1; 124 v 298, § 1; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "and land apply annually or buy, sell, or land apply" for "buy or sell" in (A)(2).

Cross-References to Related Sections

Corrective actions, civil penalties; injunctions, RC § 903.16.

Program for issuance of permits to operate, RC § 903.03.

Ohio Administrative Code

Certified livestock manager. OAC 901:10-1-06.

Contents of manure management plan. OAC 901:10-2-08 et seq.

§ 903.08. Participation in national pollutant discharge elimination system; permit.

(A) (1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 [6111.03.5] of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of manure is transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section, the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

(B) (1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge manure from a point source into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. The owner or operator of a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. A concentrated animal feeding operation is deemed to be a point source that discharges manure into the waters of the state unless the director has determined that the concentrated animal feeding operation has no potential to discharge manure into the waters of the state. If an owner or operator of a concentrated animal feeding operation receives notice from the director that the director has determined that the concentrated animal feeding operation has no potential to discharge manure, the owner or operator is not required to apply for an individual NPDES permit or for coverage under a general NPDES permit for that operation. The director's determination shall be made in accordance with rules. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of manure prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C) (1) On and after the date on which the United States environmental protection agency

approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by rule. The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

- (1) The application contains misleading or false information.
- (2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.
- (3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse

effects on the environment when the discharges are considered collectively and individually.

(2) The discharges are more appropriately authorized by a general permit than by an individual permit.

(3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K) (1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the director pursuant to terms and conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(L) The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(M) (1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.08 (GC § 1170-2; 124 v 298, § 2; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

See provisions, § 4 of SB 141 (148 v -), at RC § 903.02.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" in (A)(1); and rewrote (B)(1).

Cross-References to Related Sections

Penalties, RC § 903.99.

Corrective actions, civil penalties concerning NPDES permits; injunction, RC § 903.17.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Criteria for decision-making. OAC 901:10-1-03.

Fees. OAC 901:10-1-04.

General administrative requirements. OAC 901:10-1-02.

Prohibitions. OAC 901:10-1-10.

NPDES permit. OAC ch. 901:10-3.

Effluent limitations. OAC 901:10-3-02 et seq.

Variances. OAC 901:10-3-08.

[§ 903.08.1] § 903.081. Effect of receipt of income from permittee or applicant for permit.

(A) For purposes of section 903.08 of the Revised Code, no person shall issue a NPDES permit if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. In addition, no person who, pursuant to an appeal of an action regarding a NPDES permit, has the authority to require or to order the director of agriculture to vacate or modify a NPDES permit shall require or order the director to vacate or modify a NPDES permit if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit.

(B) As used in this section:

(1) "Significant portion of income" means ten per cent or more of gross personal income in a calendar year or fifty per cent or more of gross personal income in a calendar year if the recipient of the income is more than sixty years of age and is receiving that portion of income under retirement benefits, including a pension or similar arrangement.

(2) "Income" includes retirement benefits, consultant fees, and stock dividends. "Income" does not include mutual fund payments or other diversified investments for which the recipient does not know the identity of the primary sources of the income.

(3) "Permittee" and "applicant for a NPDES permit" does not include any department or agency of the state.

HISTORY: 150 v H 152, § 1, eff. 11-5-03.

[§ 903.08.2] § 903.082. Additional facilities that may be required to be permitted as medium or small feeding operation.

(A) The director of agriculture may determine that an animal feeding facility that is not a medium concentrated animal feeding operation or small concentrated animal feeding operation as defined in section 903.01 of the Revised Code nevertheless shall be required to be permitted as a medium or small concentrated animal feeding operation when all of the following apply:

(1) The director has received from the chief of the division of soil and water conservation in the department of natural resources a copy of an order issued under section 1511.02 of the Revised Code that specifies that the animal feeding facility has caused agricultural pollution by failure to comply with standards established under that section and that the animal feeding facility therefore should be required to be permitted as a medium or small concentrated animal feeding operation.

(2) The director or the director's authorized representative has inspected the animal feeding facility.

(3) The director or the director's authorized representative finds that the facility is not being operated in a manner that protects the waters of the state.

(B) If an animal feeding facility is required to be permitted in accordance with this section, the owner or operator of the facility shall apply to the director for a permit to operate as a concentrated animal feeding operation. In a situation in which best management practices cannot be implemented without modifying the existing animal feeding facility, the owner or operator of the facility also shall apply for a permit to install for the facility.

(C) In the case of an animal feeding facility for which a permit to operate is required under this section, a permit to operate shall not be required after the end of the five-year term of the permit if the problems that caused the facility to be required to obtain the permit have been corrected to the director's satisfaction.

HISTORY: 150 v H 152, § 1, eff. 11-5-03.

§ 903.09. Draft NPDES permit; public meetings; application of antidegradation policy; proceedings on application for permit.

(A) Prior to issuing or modifying a permit to install, permit to operate, or NPDES permit, the director of agriculture shall issue a draft permit. The director or the director's representative shall mail notice of the issuance of a draft permit to the applicant and shall publish the notice once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located or proposed to be located. The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the board of county commissioners of the county and the board of township trustees of the township in which the concentrated animal feeding facility or discharger is located or proposed to be located. The director or the director's representative also shall provide notice of the issuance of a draft NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act. Notice of the issuance of a draft permit to install, permit to operate, or NPDES permit shall include the address where written comments concerning the draft permit may be submitted and the period of time during which comments will be accepted as established by rule.

If the director receives written comments in an amount that demonstrates significant public interest, as defined by rule, in the draft permit, the director shall schedule one public meeting to provide information to the public and to hear comments pertinent to the draft permit. The notice of the public meeting shall be provided in the same manner as the notice of the issuance of the draft permit.

(B) If a person is required to obtain both a permit to install and a permit to operate, including any permit to operate with NPDES provisions, and public meetings are required for both permits, the public meetings for the permits shall be combined.

(C) The director shall apply the antidegradation policy adopted under section 6111.12 of the Revised Code to permits issued under this chapter to the same degree and under the same circumstances as it applies to permits issued under Chapter 6111. of the Revised Code. The director shall hold one public meeting to consider antidegradation issues when such a meeting is required by the antidegradation policy. When allowed by the antidegradation policy, the director shall hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit.

(D) The director or the director's representative shall publish notice of the issuance of a final permit to install, permit to operate, or NPDES permit once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located.

(E) Failure of the director to provide notice or a public meeting shall invalidate a permit only if the failure is raised by, and was relied upon to the detriment of, a person that is entitled to appeal the permit. Notice or a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.

(F) The denial, modification, suspension, or revocation of a permit to install, permit to

operate, or NPDES permit without the consent of the applicant or permittee shall be preceded by a proposed action stating the director's intention to issue an order with respect to the permit and the reasons for it.

The director shall mail to the applicant or the permittee notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit. The director shall publish the notice once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or concentrated animal feeding operation is located or proposed to be located. The director shall mail a copy of the notice of the proposed action to the board of county commissioners of the county and to the board of township trustees of the township in which the concentrated animal feeding facility or concentrated animal feeding operation is located or proposed to be located. The director also shall provide notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to any other person that is entitled to notice under the Federal Water Pollution Control Act. The notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit shall include the address where written comments concerning the director's proposed action may be submitted and the period of time during which comments will be accepted as established by rule. If the director receives written comments in an amount that demonstrates significant public interest, as defined by rule, the director shall schedule one public meeting to provide information to the public and to hear comments pertinent to the proposed action. The notice of the public meeting shall be provided in the same manner as the notice of the director's proposed action.

The director shall not issue an order that makes the proposed action final until the applicant or permittee has had an opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. An order of the director that finalizes the proposed action or an order issuing a permit without a prior proposed action may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(G) (1) The director shall issue an order issuing or denying an application for a permit to operate that contains NPDES provisions or for a NPDES permit, as well as any application for a permit to install that is submitted simultaneously, not later than one hundred eighty days after receiving the application.

(2) In the case of an application for a permit to install or permit to operate that is not connected with an application for a NPDES permit, the director shall issue or propose to deny the permit not later than ninety days after receiving the application. If the director has proposed to deny the permit to install or permit to operate under division (G)(2) of this section, the director shall issue an order denying the permit or, if the director decides against the proposed denial, issuing the permit not later than one hundred eighty days after receiving the application. If the

director denies the permit, the director shall notify the applicant in writing of the reason for the denial.

(H) All rulemaking and the issuance of civil penalties under this chapter shall comply with Chapter 119. of the Revised Code.

(I) Upon the transfer of ownership of an animal feeding facility for which a permit to install, an installation permit, a review compliance certificate, or a permit to operate that contains no NPDES provisions has been issued, the permit or certificate shall be transferred to the new owner of the animal feeding facility except as provided in division (C) of section 903.05 of the Revised Code. In the case of the transfer of ownership of a point source for which a NPDES permit or a permit to operate that contains NPDES provisions has been issued, the permit shall be transferred in accordance with rules.

(J) Applications for installation permits for animal feeding facilities pending before the director of environmental protection on the date on which the director of agriculture has finalized the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code shall be transferred to the director of agriculture. In the case of an applicant who is required to obtain a permit to install and a permit to operate under sections 903.02 and 903.03, respectively, of the Revised Code, the director of agriculture shall process the pending application for an installation permit as an application for a permit to install and a permit to operate.

(K) Applications for NPDES permits for either of the following that are pending before the director of environmental protection on the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code shall be transferred to the director of agriculture:

(1) The discharge of manure;

(2) The discharge of storm water resulting from an animal feeding facility. In the case of an applicant who is required to obtain a NPDES permit under section 903.08 of the Revised Code, the director of agriculture shall process the pending application as an application for a NPDES permit under that section.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.09 (GC § 1174; 103 v 304(324), § 97; 106 v 122(123), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, inserted "permit" following "draft NPDES" in (A); inserted the second paragraph in (F); and made minor stylistic changes.

Ohio Administrative Code

NPDES permit. OAC ch. 901:10-3.

Permit modifications. OAC 901:10-1-09.

Permit transfer. OAC 901:10-1-08.

Public notices. OAC ch. 901:10-6.

§ 903.10. Rules.

The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(A) Establish all of the following concerning permits to install and permits to operate:

- (1) A description of what constitutes a modification of a concentrated animal feeding facility;
- (2) The amount of the fee that must be submitted with each permit application and each application for a permit modification;
- (3) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;
- (4) Information that must be included in a manure management plan required to be submitted with an application for a permit to operate;
- (5) Information that must be included in an application for the modification of an installation permit, a permit to install, or a permit to operate;
- (6) Any additional information that must be included with a permit application;
- (7) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and permits to operate, including general permits;
- (8) Grounds for the denial, modification, suspension, or revocation of permits to install and permits to operate in addition to the grounds established in division (D) of section 903.02 and division (D) of section 903.03 of the Revised Code;

(9) A requirement that a person that is required to obtain both a permit to install and a permit to operate submit applications for those permits simultaneously;

(10) A definition of "general permit to operate" that establishes categories of concentrated animal feeding facilities to be covered under such a permit and a definition of "individual permit to operate" together with the criteria for issuing a general permit to operate and the criteria for determining a person's eligibility to operate under a general permit to operate.

(B) Establish all of the following for the purposes of review compliance certificates issued under section 903.04 of the Revised Code:

(1) The form of a certificate;

(2) Criteria for what constitutes a significant capital expenditure under division (D) of that section;

(3) Deadlines and procedures for submitting information under division (E)(2) of that section.

(C) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (C)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application.

(2) Disposal of dead livestock;

(3) Any other activity that the director considers appropriate.

Best management practices established in rules adopted under division (C) of this section shall not conflict with best management practices established in rules that have been adopted under any other section of the Revised Code and that are in effect on March 15, 2001. The rules adopted under division (C) of this section shall establish guidelines that require owners or operators of concentrated animal feeding facilities to consult with and work with local officials, including boards of county commissioners and boards of township trustees, in addressing issues related to local government infrastructure needs and the financing of that infrastructure.

(D) Establish all of the following concerning insect and rodent control plans required under section 903.06 of the Revised Code:

(1) The information to be included in an insect and rodent control plan;

(2) Criteria for approving, disapproving, or requiring modification of an insect and rodent control plan;

(3) Criteria for determining compliance with or violation of an insect and rodent control plan;

(4) Procedures and standards for monitoring insect and rodent control plans;

(5) Procedures and standards for enforcing insect and rodent control plans at concentrated animal feeding facilities at which insects or rodents constitute a nuisance or adversely affect public health;

(6) The amount of civil penalties for violation of an insect and rodent control plan assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code, provided that the rules adopted under division (D)(6) of this section shall not establish a civil penalty of more than ten thousand dollars for a violation involving a concentrated animal feeding facility that is not a major concentrated animal feeding facility and shall not establish a civil penalty of more than twenty-five thousand dollars for a violation involving a major concentrated animal feeding facility;

(7) The time period within which the director must approve or deny an insect and rodent control plan after receiving it;

(8) Any other provisions necessary to administer and enforce section 903.12 of the Revised Code.

(E) Establish all of the following concerning livestock manager certification required under section 903.07 of the Revised Code:

(1) The information to be included in an application for a livestock manager certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant for a livestock manager certification. The training shall include and the examination shall test the applicant's knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment. The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a livestock manager certification;

(4) The length of time during which livestock manager certifications will be valid and

procedures for their renewal;

(5) The volume of manure that must be transported and land applied annually or the volume of manure that must be bought, sold, or land applied annually by a person in order for the person to be required to obtain a livestock manager certification under division (A)(2) of section 903.07 of the Revised Code;

(6) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code.

(F) Establish all of the following concerning NPDES permits:

(1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code. This designation shall include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act.

(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;

(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;

(4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the state; and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for permits and notices of intent to be covered by general permits, including information that must be included in the applications and notices;

(6) The amount of the fee that must be submitted with an application for a permit;

(7) Procedures for processing permit applications, including public notice and participation requirements;

(8) Procedures for notifying the United States environmental protection agency of the submission of permit applications, the director's action on those applications, and any other reasonable and relevant information;

(9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;

(10) Procedures for the transfer of permits to new owners or operators;

(11) Grounds and procedures for the issuance, denial, modification, suspension, or revocation of permits, including general permits;

(12) A definition of "general NPDES permit" that establishes categories of point sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit.

The rules adopted under division (F) of this section shall be consistent with the requirements of the Federal Water Pollution Control Act.

(G) Establish public notice and participation requirements, in addition to the procedures established in rules adopted under division (F)(7) of this section, for the issuance, denial, modification, transfer, suspension, and revocation of permits to install, permits to operate, and NPDES permits consistent with section 903.09 of the Revised Code, including a definition of what constitutes significant public interest for the purposes of divisions (A) and (F) of section 903.09 of the Revised Code and procedures for public meetings. The rules shall require that information that is presented at such a public meeting be limited to the criteria that are applicable to the permit application that is the subject of the public meeting.

(H) Establish the amount of civil penalties assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code for violation of the terms and conditions of a permit to install, permit to operate, or review compliance certificate, provided that the rules adopted under this division shall not establish a civil penalty of more than ten thousand dollars per day for each violation;

(I) Establish procedures for the protection of trade secrets from public disclosure. The procedures shall authorize the release of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act. The rules shall require at least ten days' written notice to the person to whom a trade secret applies prior to the release of the trade secret. Rules adopted under this division do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under section 903.08 of the Revised Code or rules adopted under division (F) of this section.

(J) Establish any other provisions necessary to administer and enforce this chapter.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.10 (GC § 1176; 103 v 304(324), § 99; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53; 137 v H 42), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" in the final paragraph in (C); substituted "that is not a major concentrated animal feeding facility" for "with a total design capacity of ten thousand or fewer animal units" in (D)(6); substituted "and land applied annually or the volume of manure that must be bought, sold, or land applied" for "bought or sold" in (E)(5); and substituted "divisions (A) and (F)" for "division (A)" in (G).

Cross-References to Related Sections

Corrective actions, civil penalties concerning NPDES permits; injunction, RC § 903.17.

Corrective actions, civil penalties; injunctions, RC § 903.16.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Complaints; inspections; penalties. OAC ch. 901:10-5.

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Trade secret requests for confidentiality. OAC 901:10-1-05.

General permits to operate. OAC ch. 901:10-4.

NPDES permit. OAC ch. 901:10-3.

Public notices. OAC ch. 901:10-6.

Public meetings. OAC 901:10-6-04.

Permit to install; permit to operate; management plans. OAC ch. 901:10-2.

§ 903.11. Contracts or agreements to implement chapter; grants and loans.

(A) The director of agriculture may enter into contracts or agreements to carry out the purposes of this chapter with any public or private person, including the Ohio state university

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extension service, the natural resources conservation service in the United States department of agriculture, the environmental protection agency, the division of soil and water conservation in the department of natural resources, and soil and water conservation districts established under Chapter 1515. of the Revised Code. However, the director shall not enter into a contract or agreement with a private person for the review of applications for permits to install, permits to operate, NPDES permits, or review compliance certificates that are issued under this chapter or for the inspection of a facility regulated under this chapter or with any person for the issuance of any of those permits or certificates or for the enforcement of this chapter and rules adopted under it.

(B) The director may administer grants and loans using moneys from the federal government and other sources, public or private, for carrying out any of the director's functions. Nothing in this chapter shall be construed to limit the eligibility of owners or operators of animal feeding facilities or other agricultural enterprises to receive moneys from the water pollution control loan fund established under section 6111.036 [6111.03.6] of the Revised Code and the nonpoint source pollution management fund established under section 6111.037 [6111.03.7] of the Revised Code.

The director of agriculture shall provide the director of environmental protection with written recommendations for providing financial assistance from those funds to agricultural enterprises. The director of environmental protection shall consider the recommendations in developing priorities for providing financial assistance from the funds.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.11 (GC § 1177; 103 v 304(325), § 100; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

§ 903.12. Right of entry; access to records.

(A) The director of agriculture or the director's authorized representative at reasonable times may enter on any public or private property, real or personal, to make investigations and inspections, including the sampling of discharges and the inspection of discharge monitoring equipment, or to otherwise execute duties that are necessary for the administration and enforcement of this chapter. The director or the director's authorized representative at reasonable times may examine and copy any records pertaining to discharges that are subject to this chapter or any records that are required to be maintained by the terms and conditions of a permit or

review compliance certificate issued under this chapter. If refused entry, the director or the director's authorized representative may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant.

(B) No person to whom a permit or review compliance certificate has been issued under this chapter shall refuse entry to the director or the director's authorized representative or purposely hinder or thwart the director or the director's authorized representative in the exercise of any authority granted under division (A) of this section.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.12 (GC § 1177-1; 103 v 304(325), § 101; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Permit to operate and operating record requirements. OAC 901:10-2-16.

Right to enter property for investigations and inspections. OAC 901:10-5-02.

§ 903.13. Affirmative defenses in private nuisance action.

In a private civil action for an alleged nuisance related to agricultural activities conducted at a concentrated animal feeding facility, it is an affirmative defense if the person owning, operating, or otherwise responsible for the concentrated animal feeding facility is in compliance with best management practices established in the installation permit, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility and the agricultural activities do not violate federal, state, and local laws governing nuisances.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.13 (GC § 1177-2; 103 v 304(325), § 102; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53; 138 v H 275; 139 v H 95), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Requirements of specific management plans and practices -

Closure or discontinuance of facility. OAC 901:10-2-18.

Disposal of dead livestock. OAC 901:10-2-15.

Emergency response. OAC 901:10-2-17.

Insect and rodent control. OAC 901:10-2-19.

Manure management. OAC 901:10-2-08 et seq.

Operating records. OAC 901:10-2-16.

§ 903.14. Nonbinding arbitration prior to filing private nuisance action.

Prior to filing a private civil action for an alleged nuisance related to agricultural activities conducted at a concentrated animal feeding facility, the parties to the dispute shall submit the dispute to an arbitrator for nonbinding arbitration. The parties shall pay the arbitrator a reasonable compensation based on the extent and duration of actual service rendered. the cost of the arbitrator's services shall be divided proportionately among the parties.

If the decision reached by the arbitrator is not accepted by all parties to the dispute, the complaining parties may file a civil action and the claim shall proceed as if it had not been submitted to nonbinding arbitration. No oral or written statement prepared for or made in the nonbinding arbitration by the arbitrator or any of the parties, including any mental impression, recommendation, or decision by the arbitrator, is subject to discovery or admissible into evidence in any litigation or proceeding for any purpose, including impeachment. The arbitrator shall be disqualified as a witness, consultant, or expert on any subject that is related to the arbitration.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.14 (GC § 1177-3; 103 v 304(325), § 103; 106 v 122(125), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

§ 903.15. Complaint submitted to director; investigation.

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(A) A person who is aggrieved or adversely affected by an alleged nuisance related to a concentrated animal feeding facility may submit a complaint to the director of agriculture alleging that the nuisance exists. The complaint may be made orally or in writing. If the complaint is made in writing, it shall be signed by the person making it and dated.

(B) After receiving a written, signed, and dated complaint, the director shall, or after receiving an oral complaint the director may, cause an investigation to be conducted to determine if the owner or operator of the concentrated animal feeding facility is complying with a permit or review compliance certificate.

(C) (1) If, upon completion of the investigation, the director determines that the owner or operator is in compliance with a permit or review compliance certificate, the director shall dismiss the complaint and notify the complainant and the owner or operator of the dismissal.

(2) If the director determines that the owner or operator is not in compliance with a permit or review compliance certificate, the director shall proceed in accordance with section 903.16 or 903.17 of the Revised Code, or both, as applicable.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.15 (GC § 1177-4; 103 v 304(325), § 104; 106 v 122(125), § 9; 109 v 45; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Complaints for nuisances. OAC 901:10-5-01.

Enforcement procedures. OAC 901:10-5-03.

ALR

Hog breeding, confining, or processing facility as constituting a nuisance. 93 ALR5th 621.

§ 903.16. Corrective actions, civil penalties; injunctions.

(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

Civil penalties shall be assessed under this division as follows:

(1) A person who has violated section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate, or rules adopted under division (A) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) A person who has violated the requirements established under division (C) of section 903.06 of the Revised Code shall pay a civil penalty in an amount established in rules for each violation. Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements established under division (A) of section 903.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation. Each thirty-day period during which a violation continues constitutes a separate violation.

(C) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.02, 903.03, or 903.04 of the Revised Code; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code; rules adopted under division (A) of section 903.10 of the Revised Code; or an order issued under division (B) of this section.

(D) (1) In lieu of seeking civil penalties under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) The director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating section 903.02, 903.03, or 903.04 of the Revised Code, rules adopted under division (A) of section 903.10 of the Revised Code, or an order issued under division (B) of this section.

(3) A person who has committed a violation for which the attorney general may bring an action for a civil penalty under division (D)(1) or (2) of this section shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.16 (GC § 1177-6; 103 v 304(326), § 106; 106 v 122(125), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, in the introductory language of (A) and in (B)(1), inserted "section 903.02, 903.03, or 903.04 of the Revised Code" and "or the rules adopted under division (A) of section 903.10 of the Revised Code"; and inserted "under" in (C).

Cross-References to Related Sections

Emergency orders, RC § 903.18.

Ohio Administrative Code

Civil penalties. OAC 901:10-5-04.

Enforcement procedures. OAC 901:10-5-03.

§ 903.17. Corrective actions, civil penalties concerning NPDES permits; injunctions.

(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a point source if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted under division (F) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the point source, determined that the owner or operator is still not in compliance, and issued a notice of violation to require corrective actions.

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order and assess a civil penalty of not more than ten thousand dollars per violation against the violator. For purposes of determining the civil penalty, each day that a violation continues constitutes a separate and distinct violation. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(C) To the extent consistent with the Federal Water Pollution Control Act, the director shall consider technical feasibility and economic costs in issuing orders under this section.

(D) (1) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section.

(2) In lieu of seeking civil penalties under division (A) of this section, the director may request, in writing, the attorney general to bring an action for a civil penalty of not more than ten thousand dollars per violation in a court of competent jurisdiction against any person that has violated or is violating section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section. For purposes of determining the civil penalty to be assessed under division (B) of this section, each day that a violation continues constitutes a separate and distinct violation.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.17 (GC § 1177-5; 103 v 304(326), § 105; 106 v 122(125), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Emergency orders, RC § 903.18.

Ohio Administrative Code

Civil penalties. OAC 901:10-5-04.

Enforcement procedures. OAC 901:10-5-03.

§ 903.18. Emergency orders.

(A) Notwithstanding sections 903.16 and 903.17 of the Revised Code, if the director of agriculture determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. The director's order is appealable in accordance with section 119.12 of the Revised Code. No emergency order shall remain in effect for more than one hundred twenty days after its issuance.

(B) A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure that requires emergency action to protect public health or safety or the environment is liable to the director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the director, the attorney general shall bring a civil action against the responsible person or persons to recover those costs. Moneys recovered under this division shall be paid into the state treasury to the credit of the livestock management fund.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.18 (GC § 1175; 103 v 304(324), § 98; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Emergency enforcement and cost recovery. OAC 901:10-5-05.

Emergency response plan. OAC 901:10-2-17.

§ 903.19. Livestock management fund.

All money collected by the director of agriculture from application fees under sections 903.02, 903.03, 903.07, and 903.08 of the Revised Code, all money collected from civil penalties under sections 903.16 and 903.17 of the Revised Code, and all money collected under division

(B) of section 903.18 of the Revised Code shall be deposited in the livestock management fund, which is hereby created in the state treasury. Money credited to the fund shall be used solely in the administration of this chapter.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.19 (GC § 1177-8; 103 v 304(326), § 108; 106 v 122(126), § 9; 109 v 46; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

§ 903.20. Concentrated animal feeding facility advisory committee.

(A) There is hereby created the concentrated animal feeding facility advisory committee consisting of the directors of agriculture, development, environmental protection, and natural resources and the dean of the college of food, agricultural, and environmental sciences of the Ohio state university, or their designees, as members ex officio, and sixteen members to be appointed by the director of agriculture. Of the appointed members, one shall be an elected local government official whose jurisdiction has a concentrated animal feeding facility located in it at the time that the official is appointed to the committee, one shall be a person who is licensed to practice veterinary medicine under Chapter 4741. of the Revised Code, one shall represent the interests of poultry producers, one shall represent the interests of swine producers, one shall represent the interests of dairy farmers, one shall represent the interests of beef cattle producers, one shall represent the interests of sheep producers, one shall represent the interests of drinking water utilities, one shall represent the interests of wastewater utilities, one shall represent the Ohio environmental health association, two shall represent the interests of statewide environmental advocacy organizations, and four shall represent the interests of the public. Prior to making the appointment of the member who is an elected local government official, the director shall solicit a list of suggested candidates from the appropriate statewide associations that represent the interests of local governments. Prior to making an appointment of a member representing the interests of poultry, swine, beef cattle, or sheep producers or dairy farmers, the director shall solicit from the appropriate statewide trade associations a list of suggested candidates to represent the interests of the species category on the committee. The members representing the public shall not be owners or operators of concentrated animal feeding facilities or associated with such facilities by contract.

Not later than thirty days after March 15, 2001, the director shall make appointments to the committee. Of the initial appointments, six shall be for terms ending one year after March 15, 2001, five shall be for terms ending two years after March 15, 2001, and five shall be for terms

ending three years after March 15, 2001. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

The committee shall meet at times that the chairperson or a majority of the committee members considers appropriate, provided that no meeting shall be held on the call of the chairperson unless at least seven days' written notice first is provided to all members of the committee. At the first meeting of the committee in each calendar year, the director of agriculture shall designate one member of the committee to serve as its chairperson and one member to serve as its vice-chairperson. A majority vote of the members of the committee is necessary to take action on any matter. A vacancy on the committee does not impair the right of the other members to exercise all of the committee's powers.

Serving as an appointed member of the committee does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. The director of agriculture, after notice and a public meeting, may remove any appointed member of the committee for misfeasance, nonfeasance, or malfeasance in office.

Appointed members of the committee shall serve without compensation for attending committee meetings. Members of the committee shall be reimbursed for their actual and necessary expenses incurred in the performance of official duties as members of the committee.

(B) The committee may do either or both of the following:

- (1) Adopt rules or procedures governing the conduct of its internal affairs;
- (2) Request from the director of agriculture, and the director shall provide, meeting space, staff support, services, and data to enable it to carry out its functions.

(C) The committee shall do all of the following:

- (1) Advise the director of agriculture in the administration of this chapter;
- (2) Keep abreast of advances in manure management practices and annually advise the directors of agriculture, environmental protection, and natural resources of the recent advances in

those areas and regarding the need for amending what constitutes best management practices;

(3) In consultation with the director of agriculture, prepare and, upon request, distribute written materials designed to assist persons who propose to establish a new or modify an existing concentrated animal feeding facility in applying for a permit to install or permit to operate. The materials also shall include information stating that, in addition to obtaining a permit to operate, it may be necessary to obtain a NPDES permit for the discharge of manure or storm water. In addition, the written materials shall include information on the meaning of a "complete application" for all of the permits, information on the public meeting process in connection with the relevant permits issued under this chapter, and a summary of the antidegradation policy established under section 6111.12 of the Revised Code together with an indication of the possibility that the owner's or operator's proposed new or modified disposal system for manure or discharges may be subject to that policy.

(D) Sections 101.82 to 101.87 of the Revised Code do not apply to the committee.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.20 (GC § 1177-7; 103 v 304(326), § 107; 106 v 122(125), § 9; 110 v 156; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" four times in the second paragraph of (A); deleted former (C)(4); and substituted "Sections 101.82 to 101.87 of the Revised Code do" for "Section 101.84 of the Revised Code does" in (D).

§ 903.21. Repealed.

Repealed, 139 v H 583, § 2 [GC §§ 1177-9; 103 v 304(326), § 109; 106 v 122(122); § 9; Bureau of Code Revision, 10-1-53; 127 v 717(718), § 1; 130 v 248, § 1]. Eff 3-16-82.

This section concerned disposition of unused county farms.

§ 903.25. Other requirements pertaining to manure, insects, rodents, odor, or siting not to be imposed.

An owner or operator of an animal feeding facility who holds a permit to install, a permit to

operate, a review compliance certificate, or a NPDES permit or who is operating under an operation and management plan, as defined in section 1511.01 of the Revised Code, approved by the chief of the division of soil and water conservation in the department of natural resources under section 1511.02 of the Revised Code or by the supervisors of the appropriate soil and water conservation district under section 1515.08 of the Revised Code shall not be required by any political subdivision of the state or any officer, employee, agency, board, commission, department, or other instrumentality of a political subdivision to obtain a license, permit, or other approval pertaining to manure, insects or rodents, odor, or siting requirements for installation of an animal feeding facility.

HISTORY: 150 v H 152, § 1, eff. 11-5-03.

§ 903.99. Penalties.

(A) Whoever violates division (A)(2) of section 903.02 or division (A)(2) of section 903.03 of the Revised Code is guilty of a misdemeanor of the third degree on a first offense, a misdemeanor of the second degree on a second offense, and a misdemeanor of the first degree on a third or subsequent offense. Each ten-day period that the offense continues constitutes a separate offense.

(B) Whoever violates the terms and conditions of a permit to install issued under section 903.02 of the Revised Code or of a permit to operate issued under section 903.03 of the Revised Code, division (B)(1), (C)(1), or (M)(1) or (2) of section 903.08 of the Revised Code, or the NPDES provisions of a permit to operate shall be fined not more than twenty-five thousand dollars. Each day of violation constitutes a separate offense.

(C) Whoever knowingly violates division (K) of section 903.08 of the Revised Code shall be fined not more than twenty-five thousand dollars. Each day of violation constitutes a separate offense.

HISTORY: 148 v S 141. Eff 3-15-2001.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Penalties for felony, RC § 2929.11; misdemeanor, RC § 2929.21.